

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 30, 2015

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2014AP214

Cir. Ct. No. 2011FA3635

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE MARRIAGE OF:

RITA BJORG,

PETITIONER-APPELLANT,

V.

MARK INER BJORG,

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Lundsten, Higginbotham and Kloppenburg, JJ.

¶1 HIGGINBOTHAM, J. Rita Bjorgo appeals a judgment of divorce from Mark Bjorgo following a trial to the circuit court. She challenges the court's decisions on child support, maintenance, the establishment of a trust for the couple's minor children, and a property division equalization payment relating to a particular asset.

¶2 For the reasons that follow, we conclude that the circuit court erred in determining Mark's income and, therefore, must reconsider child support, maintenance, and property division generally on remand. We further conclude that the establishment of a trust for the children out of divisible property was a proper exercise of the court's discretion. Finally, with respect to one aspect of property division, an equalization payment relating to Mark's stock in his employer, Rita has not shown that the circuit court erred. Accordingly, we affirm in part, reverse in part, and remand for the circuit court to reconsider child support and maintenance, along with property division, consistent with this opinion.

BACKGROUND

¶3 Rita Bjorgo filed a petition for divorce from Mark Bjorgo in June 2011, and a judgment of divorce was entered in January 2014. At the time of the divorce, Rita and Mark were married for approximately nineteen years and had three minor children.

¶4 Mark is a shareholder at Bader Rutter & Associates, Inc., and has worked there throughout the marriage. Bader Rutter is organized as a Subchapter-S corporation; therefore, taxes on income from the business are passed to the shareholders. Mark owns stock in the company, currently valued at \$1,500,000. Mark's annual salary, based on W-2 information, is approximately \$117,000. Mark also receives annual bonuses (\$19,000 in both 2011 and 2012). Finally,

Mark receives Subchapter-S corporation distributions. In 2011 and 2012, Mark received, respectively, distributions of \$686,800 and \$844,831 and was required to pay corporation taxes of approximately \$227,752 and \$346,373. Thus, after paying taxes, Mark netted approximately \$459,048 in 2011 and approximately \$498,458 in 2012. So far as the parties explain, Mark does not pay personal income tax on these net distributions.¹

¶5 In 1997, Rita left full-time employment to stay at home with her children, which she did throughout the remainder of her marriage. Rita attended some college classes after high school, and at the time of trial, was attending classes at UW-Milwaukee. The parties stipulated that Rita's annual earning capacity was \$25,000.

¶6 A trial was held before the court on the disputed issues of property division, maintenance, and child support. The court issued findings of fact, conclusions of law, and a judgment of divorce.

¶7 In the divorce judgment, the circuit court ordered Mark to pay child support in the amount of \$1,590.78 per month, based on "the formula"² as applied to Mark's prior years W-2 wages. The court also ordered an additional amount of child support consisting of 23% of Mark's annual bonuses. The court declined to include any part of Mark's Subchapter-S corporation distributions in his income for purposes of calculating child support. As part of its child support order, the

¹ According to Mark's Schedule K-1 tax forms, Mark's share of Bader Rutter's income for 2011 and 2012 was \$936,948 and \$958,022, respectively. Neither Rita nor Mark argue that these amounts should be treated as normal gross income for purposes of calculating Mark's income.

² In its child support order, the circuit court does not identify the formula that it used.

court ordered that \$300,000 held in a money market account be placed in a separate fund or trust for the Bjorgo children's education and other substantial expenses.

¶8 The circuit court awarded maintenance to Rita for a term of nine years. The court ordered maintenance in two components. First, a fixed \$1,600 per month based on "the formula against [Mark's W-2] wages."³ Second, a variable amount which would be "23% of non-tax, non-business investment distributions to [Mark] on his Bader Rutter stock." The court declined to award maintenance based on Mark's year-end bonuses because the court concluded that the "two sums [already awarded] arising from wages and investment distributions adequately provide [Rita] with a temporary means of support to live near the lifestyle she enjoyed during marriage."

¶9 As a part of the property division order, the circuit court adopted the parties' agreement that Rita receive one-half the value of Mark's Bader Rutter stock, \$750,000, and ordered Mark to pay Rita that amount "within a reasonable period of time and no later than 10 years from the date" of the final order. This part of the property division award did not include interest on the outstanding balance. Rita appeals.

³ The circuit court does not indicate which formula it is referring to in its maintenance order.

DISCUSSION

¶10 Rita challenges the circuit court’s decision in regard to child support and maintenance, the establishment of the trust, and the property division equalization payment. We address each issue in turn.

1. Child Support

¶11 Child support determinations are within the circuit court’s discretion and will not be reversed in the absence of an erroneous exercise of that discretion. *Jarman v. Welter*, 2006 WI App 54, ¶4, 289 Wis. 2d 857, 711 N.W.2d 705. We affirm a circuit court’s discretionary decision if the court makes a rational, reasoned decision and applies the correct legal standard to the facts of record. *LeMere v. LeMere*, 2003 WI 67, ¶13, 262 Wis. 2d 426, 663 N.W.2d 789. Whether the circuit court applied the correct legal standard is a question of law, which this court reviews de novo. *See Cook v. Cook*, 208 Wis. 2d 166, 172, 560 N.W.2d 246 (1997).

¶12 Rita argues that the circuit court erred by substantially underestimating Mark’s income when it excluded his Subchapter-S corporation distributions. The parties agree that the circuit court should have included Mark’s net distributions (that is, the distribution amount left after he pays his portion of the corporation’s taxes) in its calculation of Mark’s gross income. However, the parties disagree on whether the portion of Mark’s Subchapter-S corporation distributions used to satisfy his tax obligation should also be included in Mark’s income for purposes of calculating child support and, for that matter, maintenance.

¶13 Rita contends that the full amount Mark receives in Subchapter-S corporation distributions should be included, even though Mark must pay his

corporate tax liability from that distribution. Mark argues that only the amount he nets should be considered. For 2011, the net amount was \$459,048 (\$686,800 less \$227,752 in taxes) and for 2012, the net amount was \$498,458 (\$844,831 less \$346,373 in taxes). We agree with Rita. As explained below, courts normally look to taxable income when determining a paying spouse's ability to pay child support and Mark fails to persuade us that the amounts he nets are comparable to normal taxable income.

¶14 Mark argues that the portion of the Subchapter-S corporation distributions that he receives to pay his portion of the corporation's tax liability is not gross income for child support purposes. His argument is that he does not actually receive the portion of the distribution used to pay taxes because the money was distributed to him for the purpose of satisfying his personal tax liability on the corporation's earnings. In other words, he contends that the money is illusory to him, Rita, and the children because he never gets to use the money. Mark analogizes the distributions made to pay taxes with the facts in *Winters v. Winters*, 2005 WI App 94, 281 Wis. 2d 798, 699 N.W.2d 229, where the minority shareholder in that case had no control or access to corporate retained earnings, and argues that the result in *Winters* should be the same here. We are not persuaded.

¶15 When determining child support, Wisconsin law requires a court to base its determination on the parent's annual gross income. WIS. ADMIN. CODE § DCF 150.03. The definition of gross income includes, "[a]ll other income, *whether taxable or not*" except for several types of income that are not at issue here. WIS. ADMIN. CODE § DCF 150.02(13)(a)10. (emphasis added). Gross income for child support purposes is defined in broad terms. In *Schinner v. Schinner*, 143 Wis. 2d 81, 104, 420 N.W.2d 381 (Ct. App. 1988), we stated that

the “[s]ources of income, ordinary and extraordinary, are to be considered when setting child support.” In *Lyman v. Lyman*, 2011 WI App 24, ¶¶13-17, 331 Wis. 2d 650, 795 N.W.2d 475, we started with the premise that all income is included in gross income to determine child support obligations. This language is broad and all-inclusive, and is construed as including all before-tax income, with certain exceptions. See *id.*, 331 Wis. 2d 650, ¶23 (“[C]hild support is determined based upon the payor’s gross income rather than net after-tax income.”).

¶16 To sum up, in the usual case a payer’s gross income is the starting point in setting child support. Thus, a reasonable starting assumption here is that Mark’s Subchapter-S distributions, including the portion used to pay Mark’s tax obligation, are properly considered in determining Mark’s gross income.

¶17 Mark does not provide a cogent reason for treating pass-through distributions to a minority shareholder differently than other taxable income, such as W-2 wages. Regardless of the source of income, under both scenarios the payer is mandated to pay taxes on the amount received, and yet, in Mark’s view, his “distribution” income should be treated differently. We fail to see the distinction that Mark wants us to accept. In sum, there is no indication in the definition of gross income that would lead us to believe that the portion of Mark’s Subchapter-S corporation distributions used to pay his tax liability should be treated differently from other taxable income for child support purposes.

¶18 As indicated, the circuit court relied on *Winters* when it declined to include Mark’s Subchapter-S corporation distributions in his gross income. Mark also relies on *Winters* as the basis for excluding his Subchapter-S corporation distributions from his gross income. The definition of gross income includes “[u]ndistributed income of a corporation” under certain circumstances. WIS.

ADMIN. CODE § DCF 150.02(13)(a)9. Both Rita and Mark spend a considerable amount of time discussing whether the portion of Mark's Subchapter-S corporation distributions used to pay taxes falls into this type of gross income. This provision, however, is not instructive because, as we will discuss in the context of *Winters*, the income at issue here is not undistributed income.

¶19 In *Winters*, we followed WIS. ADMIN. CODE § DWD 40.02(13)(a)9., which is now WIS. ADMIN. CODE § DCF 150.02(13)(a)9., and held that undistributed income to a minority stockholder of a Subchapter-S corporation is not income for the purpose of setting child support because the stockholder paying parent lacks the ability to control or access the corporation's earnings. *Winters*, 281 Wis. 2d 798, ¶¶7, 12. Thus, *Winters* is not applicable because, here, Mark actually received the distributions at issue. We did not consider the argument that distributed income that covered the payer's income tax liability should be included as income for child support purposes. *Id.* at ¶13.⁴ More specifically, in *Winters*, we did not rule on the issue pertinent here: whether gross distributions, including the portion distributed to pay the Subchapter-S corporation's tax liability, are included as gross income for child support purposes.

¶20 Accordingly, we conclude that the circuit court erroneously relied on *Winters* as a basis for not including all Subchapter-S corporation distributions in Mark's gross income for child support purposes. We note that there may be a reason not brought to our attention that might justify ignoring these distributions for purposes of child support. We hold only that the arguments before us do not

⁴ In *Winters*, the appellant failed to present legal authority to support her position on this issue; therefore, we deemed the issue undeveloped and declined to consider it. *Winters v. Winters*, 2005 WI App 94, ¶13, 281 Wis. 2d 798, 699 N.W.2d 229.

justify the circuit court decision on this topic. On remand, the court may consider additional arguments by the parties as to why or why not these distributions should be included in Mark's gross income.

2. Maintenance and Property Division Generally

¶21 Because we have rejected the circuit court's approach to determining Mark's gross income, we also reverse the maintenance award. No reason has been brought to our attention why our discussion of Mark's income above does not similarly affect Mark's income for purposes of determining maintenance. Obviously, in order to make a reasoned determination of maintenance, a court must know the payer's income. *See Wright v. Wright*, 2008 WI App 21, ¶39, 307 Wis. 2d 156, 747 N.W.2d 690 ("The general rule is that the trial court is obligated to consider *all sources of income* when establishing maintenance.").

¶22 Additionally, determinations of child support interact with maintenance and property division determinations. In *Johnson v. Johnson*, 78 Wis. 2d 137, 254 N.W.2d 198 (1977), the court explained:

While division of an estate, an alimony award and a support award are all separate and distinct awards, they cannot be made in a vacuum. The amount of support money will affect the ability of a spouse to make alimony payments and the division of property will effect [sic] the need and the amount of the other awards.

Id. at 148. Thus, on remand the circuit court should revisit maintenance and may revisit property division.

¶23 This is not to say that maintenance and property division are equally suspect. So far as we can tell, the circuit court's award of maintenance is problematic because it was based on a substantially erroneous understanding about

Mark's income. Property division, however, is not as closely tied to Mark's future income. Thus, it might well be that all of the circuit court's property division decisions will stand. In particular, we note that there is no apparent reason to question the circuit court's decision to use divisible property to fund a trust for the children's benefit, a topic we address below.

¶24 Although we reverse the maintenance order based on Rita's argument regarding Mark's income, we address two other maintenance arguments Rita makes in order to provide guidance on remand.

a. Lack of analytical and factual support for maintenance determination

¶25 Rita's primary challenge to the circuit court's maintenance determination is that the court did not explain how it arrived at the amount and term of maintenance ordered. For instance, Rita complains that although the court listed some of the statutory maintenance factors in the conclusions of law section of its decision, the court failed to explain how the pertinent factors, considered together with the facts of this case, support either the maintenance award amount of \$1,600 per month or the term of maintenance, nine years. Rita also points out that the court did not support its maintenance determination with requisite factual findings, such as the reasonableness of the parties' budgets and the parties' marital standard of living.

¶26 Our standard of review is deferential. "We will not disturb the circuit court's decision regarding maintenance unless the award represents an erroneous exercise of discretion." *Rohde-Giovanni v. Baumgart*, 2004 WI 27, ¶17, 269 Wis. 2d 598, 676 N.W.2d 452. However, when a court fails to consider

relevant factors or makes an error of law, we will reverse a court's exercise of discretion. *See id.*, ¶18.

¶27 Here, we agree with Rita that the circuit court failed to provide a reasonable explanation, or really any explanation. In particular, the court failed to explain the relatively short duration of maintenance, given the length and nature of the marriage. Upon remand, the circuit court should be mindful that “a discretionary determination must be the product of a rational mental process by which the facts of record and law relied upon are stated and are considered together for the purpose of achieving a reasoned and reasonable determination.” *Id.* (quoted source omitted).

b. Maintenance award of “non-tax, non-business investment distributions”

¶28 As part of its maintenance award, the circuit court ordered Mark to pay 23% of any “non-tax, non-business investment distributions” to Rita. Rita complains that it is not clear what constitutes “non-tax, non-business investment distributions,” and that the court failed to explain how it determined she should receive only 23% of those types of distributions.

¶29 We agree with Rita that the circuit court's decision to order that Mark pay “23% against the non-tax, non-business investment distributions” to her is unclear. This portion of the maintenance order is particularly unclear because it appears that Rita was awarded 23% of what is effectively \$0. Mark explains in his brief on appeal that the “non-tax, non-business investment distributions” are distributions made to minority shareholders such as Mark, that are used to pay capital business expenses for the corporation, “which are not expensed and deducted by Bader Rutter, on its own financial statement.” Notably, however,

Mark points out that there were no such distributions from Bader Rutter to him in 2011 or 2012, and although he suggests that “there may be some in the future,” he points to nothing in the record that indicates such distributions are forthcoming. So, while it may be reasonable on its face to award Rita a percentage of Mark’s “non-tax, non-business investment distributions” should he receive any during the period of maintenance, as the court’s order now stands, it essentially awards Rita no more than \$1,600 per month. On remand Rita’s maintenance may be increased because of other factors, such as revised thinking about Mark’s income. Here, we simply indicate that the circuit court may have mistakenly believed that 23% of “non-tax, non-business investment distributions” was a meaningful source of maintenance for Rita and, if that was the circuit court’s thinking, the topic needs to be reexamined.

¶30 We need not address Rita’s other arguments as to maintenance to reach the conclusion that the interrelated nature of child support, maintenance, and property division requires that all three be reconsidered. Accordingly, we remand for the court to reconsider the amount of the maintenance award consistent with this opinion.

3. The Trust

¶31 Rita challenges the portion of the court’s child support order that established a trust for the benefit of the Bjorgo children.

a. Wrong statute

¶32 The circuit court relied on the child support statute, WIS. STAT. § 767.511(2), to create a trust for the Bjorgo children. Rita does not directly challenge the court’s reliance on § 767.511(2) to justify creating the trust. Rather,

Rita complains that the court inexplicably utilized § 767.511(2) rather than the property division statute, WIS. STAT. § 767.61(4) to create and fund the trust with \$300,000 of divisible property, and not child support. According to Rita, the court's failure to explain why it used property to fund a trust under the child support statute constitutes an erroneous exercise of discretion. Mark argues that the court correctly relied on the child support statute when it created a trust for the children's education and other expenses. We affirm the court's creation of the trust for the Bjorgo children because, although the court relied on the wrong statute, the court reached the correct result.

¶33 The circuit court, in ordering the establishment of the trust, relied on WIS. STAT. § 767.511(2), which is part of the *child support* statutory scheme, and stated that “[t]his subsection allows the court to set aside any amount of money from either or both parties into a trust fund for the children.” The court further reasoned that because “the court has jurisdiction of all the marital property in a divorce proceeding,” it “can use any of the parties’ assets as the res in the trust.”

¶34 We agree with Rita that the circuit court applied the wrong statute, WIS. STAT. § 767.511(2), when it ordered the establishment and funding of the trust with funds taken out of divisible property rather than child support. Rita correctly points out that WIS. STAT. § 767.61(4), and not § 767.511(2), authorizes the court to order the set-aside of divisible property for the purpose of establishing a trust for the benefit of the children.

¶35 While the circuit court incorrectly relied on WIS. STAT. § 767.511(2) in ordering the use of funds from divisible property to establish a trust under the child support statute, WIS. STAT. § 767.61(4) authorizes a circuit court to set aside property to fund a trust for the benefit of the children when doing so is in the

children’s best interest. WIS. STAT. § 767.61(4). It is well established that we will affirm a court’s exercise of discretion “if a circuit court reaches the proper result for the wrong reason.” See *State v. King*, 120 Wis. 2d 285, 292, 354 N.W.2d 742 (1984) (upholding the circuit court’s result after applying an incorrect statutory section); *Mueller v. Mizia*, 33 Wis. 2d 311, 318, 147 N.W.2d 269 (1967) (upholding the circuit court’s decision when the ruling was correct and supported by the record). Thus, to the extent that Rita argues that the court erred by relying on the wrong statute when it ordered the establishment of the trust out of divisible property, we agree, but reject her contention that this is a sufficient reason to reverse the award when the court’s decision is authorized by a different statute.⁵

b. The best interests of the children

¶36 Rita next argues that the circuit court failed to adequately explain how the creation of the trust was in the best interests of the children. She cites *Resong v. Vier*, 157 Wis. 2d 382, 392, 459 N.W.2d 591 (Ct. App. 1990), for the proposition that a court cannot use divisible property to create a trust without providing a factual determination that the creation of the trust is in the best interests of the child. Rita, however, does not persuade us that the court’s reasoning in *Resong* applies to this case.

¶37 In *Resong*, the circuit court created a trust as part of a modification of its child support order. *Id.* at 385-86. In the modification of its child support

⁵ Oddly Mark relies on the child support statute, WIS. STAT. § 767.511(2), to support his argument that the circuit court properly ordered the creation of a trust. This is odd because, so far as we can tell, that statute plainly contemplates funding from future income, not from divisible property. In any event, Mark does not advance any argument against the use of the property division statute, WIS. STAT. § 767.61(4), to create the specific trust at issue; therefore, our analysis on that issue stops here.

order, the circuit court required that a certain amount of monthly child support and child support arrearages be placed in a trust for a child's post-secondary education. *Id.* It did not make any findings that the trust was in the best interests of the child or that the custodial parent had been using the child support funds inappropriately. *Id.* at 391-92. We held that the court's failure to make these factual findings was an erroneous use of discretion. *Id.* at 392. We are not convinced that ***Resong*** supports Rita's position because the portion of ***Resong*** that Rita relies on hinges on the fact that the circuit court essentially took a portion of the child support payments out of the control of the custodial parent without a finding that this was necessary or in the best interests of the children. Here, in contrast, divisible property was used to establish the trust

¶38 Regardless, we acknowledge that the court did not explain in detail why establishing the trust was in the Bjorgo children's best interest. That is not the end of our inquiry, however. "Generally we will look for reasons to sustain a circuit court's discretionary decision." ***Schauer v. DeNeveu Homeowner's Ass'n, Inc.***, 194 Wis.2d 62, 71, 533 N.W.2d 470 (1995). Here, the record does so adequately. Mark testified that he sought to put the \$300,000 money market account into a trust for his children's education. Mark also testified that he was not asking the court to award him this money, that it was in the court's discretion whether to place it in a trust account for his children or to use the money to offset property division. We agree with Mark that providing for a child's secondary education or a down payment on a child's house is a desirable objective and in the child's best interest.

c. Terms of the trust

¶39 Rita's final argument concerning the trust is that the court failed to provide details on how the trust is to be managed. However, we are not persuaded that the court failed to adequately set forth the terms of the trust. First, Rita cites no legal authority that imposes such a requirement. Second, the court does provide a general structure within which the parties are required to manage the trust. For example, Rita and Mark are named co-trustees and the circuit court is to act as "the tie-breaker as to any disputed matter."

¶40 In sum, Rita fails to persuade us that the circuit court erroneously exercised its discretion in setting aside \$300,000 from the money market account to establish and fund a trust for the benefit of the parties' children.

4. Equalization Payment: Bader Rutter Stock

¶41 As part of the judgment of divorce, the circuit court ordered Mark to pay Rita one-half of the current value of Mark's Bader Rutter stock, valued at \$1,500,000, within a reasonable period of time but no later than ten years or when the stock is redeemed, whichever occurs first. In support of the ten-year term the court gave Mark to make the equalization payment, the court found that the Bader Rutter shareholder agreement barred its shareholders, including Mark, from selling or transferring their stock until the shareholders' death, disability, normal retirement, or termination. Thus, the court reasoned, the value of the stock was not currently available to Mark and he would have to use some of his own income and distributions to pay Rita sooner than ten years, which the court determined was unreasonable. Based on the above, the court found that it was reasonable to give Mark ten years to pay Rita the \$750,000.

¶42 Rita argues that the circuit court erred in setting the terms of the \$750,000 equalization payment and that it failed to award interest or consider the future value of the payment. We reject both arguments.

a. Terms of the payment

¶43 With regard to the terms of the payment, Rita argues that the court failed to explain why Mark's "inability to redeem or sell the shares led to a payment term of ten years," and that the court failed to take into account a provision in the Bader Rutter shareholder agreement that permits the sale or transfer of a shareholder's stock in the event of the shareholder's death, disability, normal retirement, or termination. For this reason, Rita argues that the court's decision to set a ten-year term for payment, rather than early payment upon the occurrence of certain events specified in the shareholder agreement, was unreasonable and not supported by the record.

¶44 In response, Mark argues that the terms set by the circuit court for the payment of Rita's interest in Mark's Bader Rutter stock were reasonable and a proper exercise of the court's discretion. Mark argues that the record supports the court's ten-year payment period, absent redemption, and that it adequately considered the Bader Rutter shareholder agreement. Furthermore, Mark emphasizes that the court correctly recognized that he, "as a minority shareholder ... does not have authority to sell or trade his share of the company."

¶45 We conclude that the circuit court's decision setting the terms of the payment of Rita's one-half interest in Mark's Bader Rutter stock was reasonable and a proper exercise of the court's discretion. The circuit court properly took into account Mark's inability to sell or transfer his stock under the shareholder agreement, except under certain circumstances, such as his death, retirement or

disability. It did so when it ordered Mark to pay Rita when he redeems his stock, but no later than ten years from the date of the divorce judgment. There was a reasonable basis in the record for the court to conclude that Mark would need ten years to make the required payment to Rita in light of the shareholder agreement. As Mark points out, he was fifty-one years old at the time of trial, which, under the shareholder agreement, is six years away from the “normal” retirement age. As a result, Mark would likely be unable to sell or transfer his stock for at least six years. Of course, once Mark is able to dispose of his stock, he will have to pay the \$750,000 to Rita, regardless of the stock’s value at that time. However, until then, the court reasonably found that Mark lacked the financial ability to pay Rita in full, a finding that is supported by the record.

b. Interest or present value for the future payment

¶46 Rita next argues that the circuit court erred because it did not award her interest on the \$750,000. According to Rita, the failure to require Mark to pay interest on the outstanding balance during the time Mark owes Rita does not take into consideration the amount of money Rita could earn if she had received the \$750,000 at the time of the judgment of divorce. We reject the argument.

¶47 Rita cites *Jasper v. Jasper*, 107 Wis. 2d 59, 69, 318 N.W.2d 792 (1982), for the proposition that where a cash payment is ordered in the course of dividing divisible property, the cash payment must reflect the income derived from the award over the term of the payment. Rita similarly cites *Corliss v. Corliss*, 107 Wis. 2d 338, 347, 320 N.W.2d 219 (Ct. App. 1982), for the general rule that in circumstances where it is “normal” to pay interest to a person who is owed money, and the court does not award interest, the court must explain in the proper

exercise of its discretion why interest is not being awarded on property payable in the future.

¶48 Essentially, Rita makes a simple time-value-of-money argument—the proposition that a dollar today is worth more than the promise of a dollar tomorrow. Stated differently, Rita contends that if one party owes another money, the normal approach is that the owing party pays interest on the outstanding balance of the amount owed and the circuit court should not have deviated from this approach here.

¶49 The problem with Rita’s argument is that she fails to come to grips with the difference between assets that are typically involved in property division and the particular asset at issue here. Typically, parties are awarded assets they control and can, if they choose, liquidate at any time. This control means that the party ordered to pay in the future has an advantage over the party that must await payment. The latter can make choices and take advantage of opportunities to earn money. The former must simply wait. See *Parrett v. Parrett*, 146 Wis. 2d 830, 845, 432 N.W.2d 664 (Ct. App. 1988). The situation here is different.

¶50 It is well within reason to award Rita one-half of the value of the stock at the time of the divorce, even if Mark is not required to pay that amount until a later date and is not required to pay interest. A reasonable alternative might be to require Mark to pay Rita one half the value of the stock, whatever that might be, when Mark sells it. But what if Mark does not sell the stock within ten years? What if the value of the stock drops? The arrangement the circuit court chose protects Rita from fluctuations in the value of the stock. Mark must pay Rita \$750,000 even if the value of the stock falls. The delayed payment makes sense based on Mark’s lack of control over the stock and in light of his ability to pay.

We do not preclude the circuit court from altering this portion of the property division order on remand. We only conclude that Rita fails to show that the circuit court erred when it declined to require Mark to pay interest on the outstanding balance.

CONCLUSION

¶51 For the reasons discussed, we reverse the circuit court's child support and maintenance determinations and remand for the court to reconsider both awards along with property division generally consistent with this opinion. As to the establishment and funding of the trust and the \$750,000 equalization payment relating to the Bader Rutter stock, we affirm. Although we affirm some decisions of the circuit court, we stress that child support, maintenance, and property division decisions are often interrelated. For example, a change in child support, under some circumstances, may justify less or more maintenance, and so on. That is to say, nothing in this decision should be read as prohibiting the circuit court on remand from revisiting parts of the judgment we ignore or even parts we expressly affirm.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.

